

**ONTARIO CIVILIAN COMMISSION ON POLICE
SERVICES**

Annual Report



2005

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Mission Statement

The Ontario Civilian Commission on Police Services is an independent oversight agency committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.

Chair's Message

I am pleased to present the Annual Report for the Ontario Civilian Commission on Police Services for 2005.

This report, provides an overview of the Commission's activities for the year. It also includes summaries of hearings and investigations conducted throughout the year.

This has been a particularly busy year with respect to investigations conducted by our staff. In total, eight section 25 investigations or fact-finding reviews were commenced or concluded during this calendar year. As well, we rendered eight disciplinary appeal decisions, one restructuring decision, and conducted 569 complaint reviews.

This year we continued to work hard to enhance our operational, procedural and policy framework to meet our legislative responsibilities. I would like to thank both staff and members for their efforts in their regard.

Detailed information on all of our proceedings held during the year can be found on our website at www.occps.ca.

Murray W. Chitra, Chair
Ontario Civilian Commission on Police Services

Role of the Commission

The Ontario Civilian Commission on Police Services is an arm's length, quasi-judicial agency of the Ministry of Community Safety and Correctional Services. The Commission reports to the Minister.

The mandate and duties of the Commission are set out in the *Police Services Act*. They are primarily adjudicative in nature and include:

- hearing appeals of police disciplinary decisions;
- adjudicating disputes between municipal councils and police services boards involving budget matters;
- conducting hearings into requests for the reduction, abolition, creation or amalgamation of police services;
- conducting investigations and inquiries into the conduct of chiefs of police, police officers and members of police services boards;
- determining the status of police service members;
- conducting reviews of local decisions relating to public complaints at the request of complainants; and,
- general enforcement relating to the adequacy and effectiveness of policing services.

In Ontario, police services and police services boards are ultimately accountable to the public through the Commission.

Commission Organization

In 2005 the Commission had a full-time Chair and a Vice-Chair, Outreach and Community Information. In addition, there were 7 part-time members.

Members are normally appointed by Order-in-Council for terms of 3 years. The men and women who serve on the Commission represent a diverse cross-section of professions and communities across Ontario. There is a small core of administrative, investigative and advisory staff supporting the work of the Commission.

The entire Commission meets in Toronto monthly. Members also participate regularly on panels to review local police service decisions concerning the classification and investigation of public complaints about the conduct of police officers. They also preside at various types of quasi-judicial proceedings.

ORGANIZATION CHART 2005

ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES

Chair

Murray Chitra

Vice Chair

Outreach and Community Information

Sylvia Hudson

Registrar

Mary Camacho

Administrative Assistants

Dora Goldberg
Lee Mason

Senior Advisor

Cathy Boxer-Byrd

Senior Investigator

Margo Boyd

Complaints Case Managers

Farideh Irandoust
Alison Limerick
Sheldon Prior
Christine Zabielski

Part time Members:

* Peter J. Doucet
Noëlle Caloren
Dave Edwards
Tammy Landau
Bill Marra
Hyacinthe Miller
Krishan D. Uppal

*term concluded December 22, 2005

Commission Budget 2005

The annual budget for the Ontario Civilian Commission on Police Services for the calendar year 2005/2006 was \$1,661,000.

The following is a breakdown of the allocated budget:

ITEM	ALLOCATION (\$000)
Salaries & Wages	1,447.9
Employee Benefits	160.8
Transportation & Communications	20.7
Services	25.1
Supplies & Equipment	6.5
Transfer Payments •	1.0
Total	1,661,000

- Statutory Appropriation: Hearings under the *Police Services Act*

Members of the Commission

Murray W. Chitra - Chair

Prior to his appointment to the Chair of the Commission, Mr. Chitra was the Legal Director for the Ontario Insurance Commission (OIC) for four years. As well, Mr. Chitra worked for ten years with the Legal Services Branch of the Ministry of Correctional Services where he served for six years as Legal Director. He was called to the Bar in Ontario in 1980. Mr. Chitra is the former President of the Society of Ontario Adjudicators and Regulators (SOAR) and a Director of the Council of Canadian Administrative Tribunals (CCAT).

Sylvia Hudson - Vice-Chair, Outreach and Community Information

Sylvia Hudson is a past member and Vice-Chair of the Race Relations Committee of a large city Police Services Board. Prior to joining the Commission, Ms Hudson was a member of the Social Benefits Tribunal. Her educational background is in social work, public administration, business and community services. She has many years experience working with community agencies serving youth and individuals at risk.

Noëlle Caloren - Member

Noëlle Caloren is a lawyer who was called to the Ontario Bar in 1995. She practices law in a large national Canadian law firm. With a background in general litigation, Ms. Caloren has developed expertise in employment and labour law, human rights and education law matters. Over the last six years, Ms. Caloren has taught Civil Procedure at the Bar Admission Course of the Law Society of Upper Canada. She is also a contributing author to a comprehensive employment law text Employment Law – Solutions for the Canadian Workplace. Ms. Caloren is fluently bilingual.

Peter J. Doucet - Member

Mr. Doucet was called to the Ontario Bar in 1984. He is the principal of a broadly-based legal practice serving clients from across Northern Ontario and various regions of Canada, the United States and internationally. He is actively involved in the community, but his business and personal interests extend to provincial, national and international issues. Mr. Doucet is fluently bilingual.

Dave Edwards - Member

Dave Edwards has been a partner in a Niagara Region law firm since 1978 practicing primarily in the areas of corporate and commercial law. During his professional career he has served on various community organizations and held a number of positions, including: Chair of the Board of Trustees of Brock University, President of the United Way of his Municipality and District, Member of the Niagara District Airport Commission, and a Member of the Boards of Directors of The Alzheimer Society of Niagara and the Rotary Club.

Dr. Tammy Landau - Member

Tammy Landau is Associate Professor in the School of Criminal Justice at Ryerson University. She has a Ph.D. in Criminology from the Centre of Criminology at the University of Toronto, and has been involved in a wide range of community projects and agencies. Dr. Landau has been a consultant to federal, provincial and local governments on a variety of justice issues. Her research interests include policing, Aboriginal justice and victimology.

Biagio (Bill) Marra - Member

Mr. Bill Marra is a graduate of the University of Windsor. He has worked in the criminal justice field since 1988. Mr. Marra is currently the Executive Director of an agency, which provides residential and nonresidential youth services for young offenders, at risk youth and foster care youth. He is very active in his community serving on several other committees/boards including as first vice-chair of a Hospital Board. From 1994 to 2003, Mr. Marra served as a member of city council in his home community. During his tenure on city council he served on over two-dozen committees, boards and commissions including as chairperson of the local police services board. Mr. Marra was also very active at the national level as a five-year board member of the Federation of Canadian Municipalities where he chaired two national standing committees related to community safety, corrections and national parole.

Hyacinthe Miller - Member

Following graduation from university, Ms. Miller worked in the private sector and for the federal and provincial governments in Ontario. She has also been active in various community agencies. During her career, Ms. Miller has been a senior manager, a technology consultant and general advisor to federal and provincial government ministries and central agency officials, law enforcement agencies and civilian oversight organizations. Currently an organizational development consultant, Ms. Miller is also Executive Director of the Canadian Association for Civilian Oversight of Law Enforcement.

Krishan D. Uppal, B.A, B.T, MSW - Member

Mr. Uppal studied extensively in India and Europe. He has had a distinguished career in community work and public service. He is the recipient of the Queen's Golden Jubilee Medal, the Governor General's Medal and the Ontario Ministry of Citizenship's Outstanding Achievement Award in recognition of his significant contribution to compatriots, Aboriginal Peoples and to Canada. Mr. Uppal has served on numerous boards and commissions, and, also as President of the India-Canada Association and the National Association of Canadians of Origins in India, Ottawa Chapter. He is retired from the federal Public Service of Canada.

The members of the Commission are representative of all areas of the Province including the Northern, Eastern and Western regions.

Report on the Outreach and Community Information Activities for 2005

The following report provides a review of the Outreach Bureau's activities for the year 2005. It summarizes the progress on the implementation of the six goals of the three-year Outreach Strategic Plan.

Background

In 2003, the Ontario Civilian Commission on Police Services approved a three-year Outreach Strategic Plan and Mandate Statement that gave the Outreach Team the blueprint to proceed with a multi-faceted program. The identified strategies included:

- internal strategic planning;
- stakeholder/community consultation;
- pamphlet distribution;
- exploring greater access to OCCPS' office;
- public information sessions; and
- improved communication.

Building on the 2004 Annual Outreach Report, the Outreach Team continued to implement the final phases of the three-year Strategic Plan. To date, four of the six phases of the Strategic Plan have been realized.

In 2005 the Outreach Team continued to focus on public information sessions that included training, forums, presentations and "Meet the Chiefs" initiatives. The "Meet the Chiefs" initiative has been designed to engage Chiefs and Senior Management of Police Professional Standards in meaningful dialogue about community issues and elements of best practices in an effort to build bridges between police and the public.

The Outreach Team presented at conferences and workshops for police officers, youths, community agencies and legal clinics to communicate information about the legislative role of the Commission and the Public Complaints System.

In collaboration with the Waterloo Regional Police Service, Timmins Police Service and Hamilton Police Service, forums were held with community groups. Also, presentations were given to the York Regional Police Service at Seneca College and a "Lunch and Learn" with the Hamilton Police Service. In addition, the Outreach Team facilitated training/presentations to public schools, colleges and universities, such as Guelph/Humber, Ryerson University and Centennial College.

These forums and presentations brought together over 800 people who, not only learned about the role of the Commission and the public complaints system, but discussed various issues relating to it.

In August 2005 over 600 international law enforcement officers assembled in Toronto for the annual Association of Black Law Enforcement Officers' one week conference. The Vice-Chair and a Commission Member were invited as panelists to discuss the role of the Commission and effective customer service in policing.

Public and Community Awareness

In 2004, the Outreach Team identified priority areas for collaboration (e.g., social agencies, youth and police stakeholders). The aim was to partner with various groups to explain the work of the Commission.

In 2005, the Outreach Team took part in training and workshops for frontline staff of social agencies such as Parkdale Community Legal Clinic, Leave Out Violence (LOVE), Frontier College (Beat the Street), African Training and Employment Centre, Shouters Youth Project, Native Men's Residence (NA-ME-RES), Scadding Court Community Centre, Street Outreach, Aboriginal Legal Services, John Howard Society, The Islamic Foundation of Toronto, Sanctuary Drop-In Centre, Central Toronto Youth Services and others. These educational initiatives focused on building awareness and an understanding of the Commission's legislative function and the public complaints system.

One of our fundamental commitments was to meet with as many youth as possible. In April 2005, in partnership with Youth In Motion, the Vice-Chair continued this commitment and used the opportunity to explain the work of the Commission to over 380 high school students and teachers from the GTA and 905 areas. As a result, on the request of their principal, high school students from Clarkson High School participated in an all-day information session and "Mock Hearing" at the Commission's Office. In addition, the Outreach Team met with students of Warden Public School and their teachers, Central Toronto Youth Services and facilitated a forum with the Toronto Youth Cabinet at Toronto City Hall.

During 2005 the Outreach Team explored a number of options to showcase the work of the Commission. Commencing with our participation at annual conferences of the Joint Rural Ontario Municipalities Association (ROMA), Ontario Good Roads Association (OGRA) Conference, the Association of Municipalities of Ontario (AMO) and at Law Day at various malls in the GTA, we set up booths and provided information to the public and stakeholders. We are currently in partnership with the Manager of Capacity Building, City of Toronto for future involvement in other community activities.

Further, we continued to seek opportunities to participate at events, conferences and other cultural activities. In January 2005, commencing with celebrations of the Chinese New Year and Black History Month, South Asian Heritage Month, Caribana and the Chinese/South Asian Scarborough Fair, every possibility was taken to advance awareness of the Commission's legislative function.

Improved Communication

A large part of the work of the Outreach Team has been to enhance and develop communication tools to connect with our various stakeholders and the sharing of information.

This year saw the continuation of the Commission Outreach Program's quarterly publication "Staying In Touch". The newsletter provides a review of activities and accomplishments and a look at planned activities for the Outreach Program scheduled throughout the year. "Staying In Touch" saw its readership expanded to over 250 groups and individuals and the expectation is to reach a broad audience. In addition, the newsletter is another method of providing regular announcements and updates to our stakeholders.

The Outreach Team continued with the distribution of the Commission's pamphlets. In addition, in 2004 the introduction of "Who We Are And What We Do" pamphlet has been a successful tool in explaining the role and legislative function of the Commission and it is in demand at community agencies.

Further, we continued to update and improve our website with event calendars, photographs and information related to the Commission's quasi-judicial role. The goal is for the website to become a central information point for the public and our police stakeholders.

The work of the Commission has also received international attention. In 2005, we hosted a 21 member Judicial Delegation from the Beijing Municipal Government for an all-day information session on the role of the Commission.

In summary many Outreach activities that began in 2004 were enhanced and continued in 2005, resulting in additional requests for presentations/training and the receipt of positive feedback from participants. The Outreach Team completed its second year of public awareness, networking, collaboration with great anticipation and enthusiasm. The work of the Outreach Team continues to evolve in order to meet the commitment of the Outreach Strategic Plan and Mandate Statement.

Inquiries, Investigations and Fact-Finding Reviews

Section 25 of the Police Services Act provides that the Commission may, "at the Solicitor General's request, at a municipal council's request, at a board's request or of its own motion, investigate, inquire into and report on:

- the conduct or the performance of duties of a police officer, a municipal chief of police, a special constable, a municipal law enforcement officer or a member of a board;
- the administration of a municipal police force;
- the manner in which police services are provided to a municipality; or
- the police needs of a municipality.

Initiation of a section 25 inquiry is a serious, resource-intensive process with the potential for negative consequences for members, chiefs of police and police services boards found to be in non-compliance. Consequences can include demotion, dismissal, suspension or revocation of an appointment.

In 1998 the Commission initiated an innovative approach to addressing those issues that were deemed to be of concern, but not falling within the parameters of a full-scale inquiry – the Fact-Finding review. This approach continues today.

There were six section 25 investigations commenced or concluded during the year 2005 as well as two Fact-Finding Reviews.

Three of the section 25 investigations involved the conduct or performance of duties of members of a police services board. Three section 25 investigations involved the conduct or performance of duties of sworn members of a police service. Two of the investigations resulted in matters being directed to hearings.

One such hearing concerned the conduct of Deputy Chief Michael Kingston of the Halton Regional Police Service.

Deputy Chief Kingston was charged with four counts of deceit, contrary to section 2(1)(d) of the Code of Conduct. In the first three counts, he was alleged to have falsified an application for promotion to the positions of District Commander, Superintendent and Deputy Chief by falsely claiming to have a 3-year Bachelor of Arts (BA) degree from the University of Waterloo. These applications spanned a five year period. In the fourth count, he was alleged to have made the same false claim in relation to an official biography, prepared for his swearing-in ceremony as Deputy Chief and for use in official speaking engagements.

At the hearing, Deputy Chief Kingston pled guilty to the four charges of deceit. An agreed statement of facts was read, which revealed that Deputy Chief Kingston had been enrolled in various half-credit courses at the University of Waterloo, beginning in 1979 and continuing intermittently thereafter. He also had credits transferred from other academic institutions. Thus, although he may have

had the 15 credits required for a BA degree from the University of Waterloo, he had never applied to have the degree conferred.

Despite the fact that he had not obtained his BA degree, he stated that he had on his applications for promotion. There was no evidence that his academic qualifications played any role in the success of his various applications for promotion; rather, he was considered a top candidate on the basis of other factors such as skill, ability and leadership. Deputy Chief Kingston has since enrolled in a police studies BA program at Georgian College.

Counsel presented a joint submission, which highlighted several points: the fact that his misrepresentations did not give Deputy Chief Kingston a material advantage in the competitions; Deputy Chief Kingston's explanation for the falsification – he felt he had the equivalent of a 3 year BA and was attempting to have that recognized and the Chief's strong endorsement of his Deputy, whom he described as retaining the trust of all levels of the service. The Commission also heard from the Board and the Chief that demotion or suspension of Deputy Chief Kingston would have an adverse impact on the Service.

Counsel submitted that, based on the lack of materiality, an appropriate penalty in this case would be the forfeiture of 5 days vacation for each of the four charges, with an additional penalty of five days for Deputy Chief Kingston's approval of the biography containing false statements. Also, counsel suggested that Deputy Chief Kingston be directed to complete the police studies BA program at Georgian College.

Based on Deputy Chief Kingston's guilty plea, he was convicted on the four counts of deceit and the joint submission on penalty was accepted. The decision was released on March 24, 2006. The full text can be found on the Commission's website at www.occps.ca or can be obtained through the Commission's office.

The second hearing is with respect to the conduct or performance of duties of a member of the Lakeshore Police Services Board. A hearing date has not yet been set.

As well there was one section 25 Fact-Finding Review conducted with respect to matters in Cobourg. The issues raised in that review were resolved at the local level and, as such, section 25 of the *Police Services Act* was not invoked.

The second Fact-Finding Review was in South Simcoe into matters raised by the South Simcoe Police Association and continues.

Section 116 Status Hearings

Municipal police forces in Ontario are composed of "members" who are appointed by local police services boards. Section 2 of the Act defines "members" to include both police officers and civilian employees.

The Act permits members to form associations for the purposes of collective bargaining. Normally, there are two associations. There is an association for officers and civilians and another for senior officers. Under section 115(2) chiefs and deputy chiefs are excluded from this scheme.

From time to time a dispute arises as to whether or not a particular member should be assigned to the local police association or senior officers association. Section 116 of the Act sets out a process to resolve such disagreements. It states:

116(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.

(2) The Commission's decision is final.

There were no section 116 Status Hearings before the Commission during 2005. The full text of previous section 116 decisions can be found on the Commission's web site at www.occps.ca.

Police Service Restructuring Hearings (Section 40)

Section 40 of the Police Services Act allows police services boards to terminate the employment of a member of a police force for the purpose of abolishing the force if the Commission consents and if the abolition does not contravene the Act.

When a municipality requests the approval of the Commission for the disbandment of their police service, they must supply the Commission with a copy of a resolution passed by municipal council. The Commission requests a copy of the proposal for the provision of alternative policing services and also ascertains whether severance arrangements have been made with those members whose employment would be terminated if the proposal is accepted.

It is not the Commission's function to judge whether or not what is being proposed is economical or superior to what may already be in place or any other alternative. The Commission's focus is to determine whether the proposed arrangements meet the requirements of the Act. It is not the function of the Commission to determine what constitutes appropriate severance arrangements. That is a matter for bargaining between the parties and, in the absence of agreement, for arbitration.

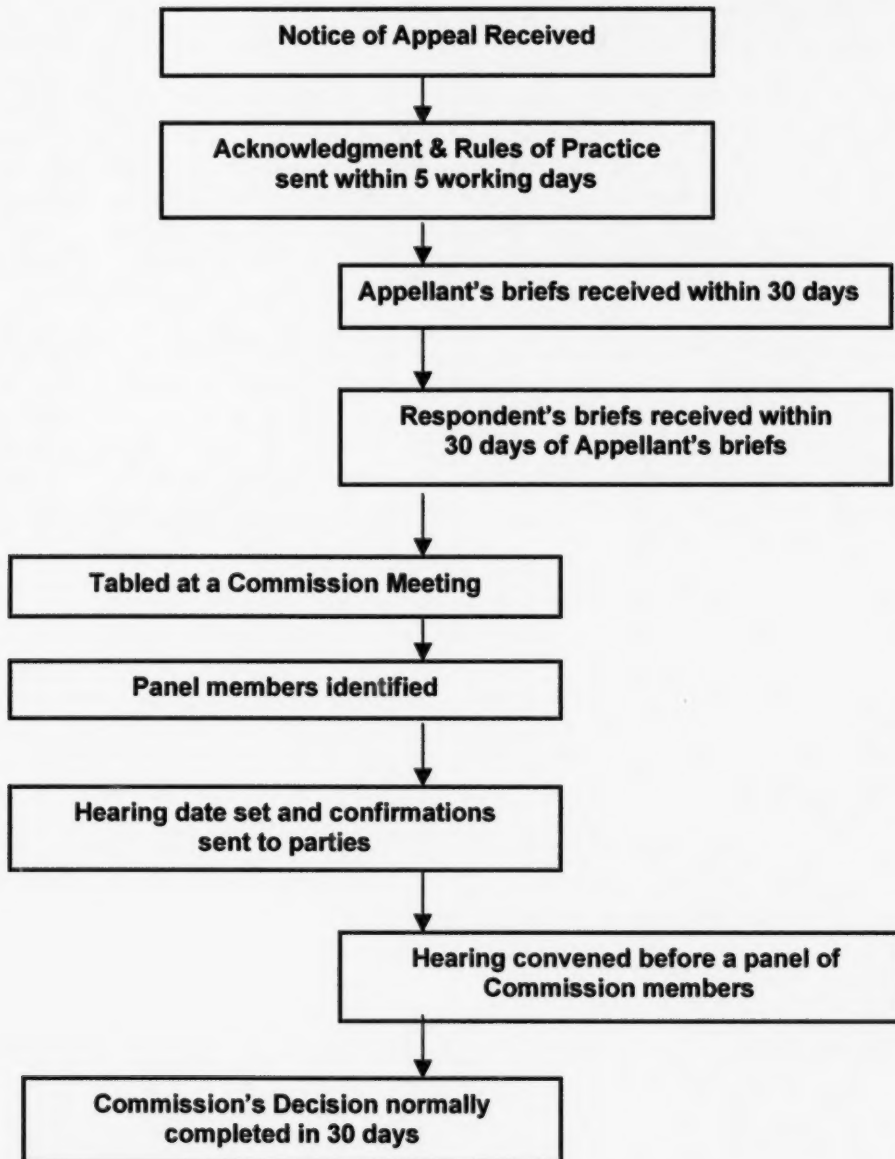
A public meeting is held to hear presentations and receive submissions. Upon the completion of the hearing, the Commission renders a written decision.

There was one restructuring hearing in the calendar year 2005. It was with respect to a request from the municipality of Atikokan to abolish their police service in favour of a contract with the Ministry of Community Safety and Correctional Services for policing to be provided by the Ontario Provincial Police.

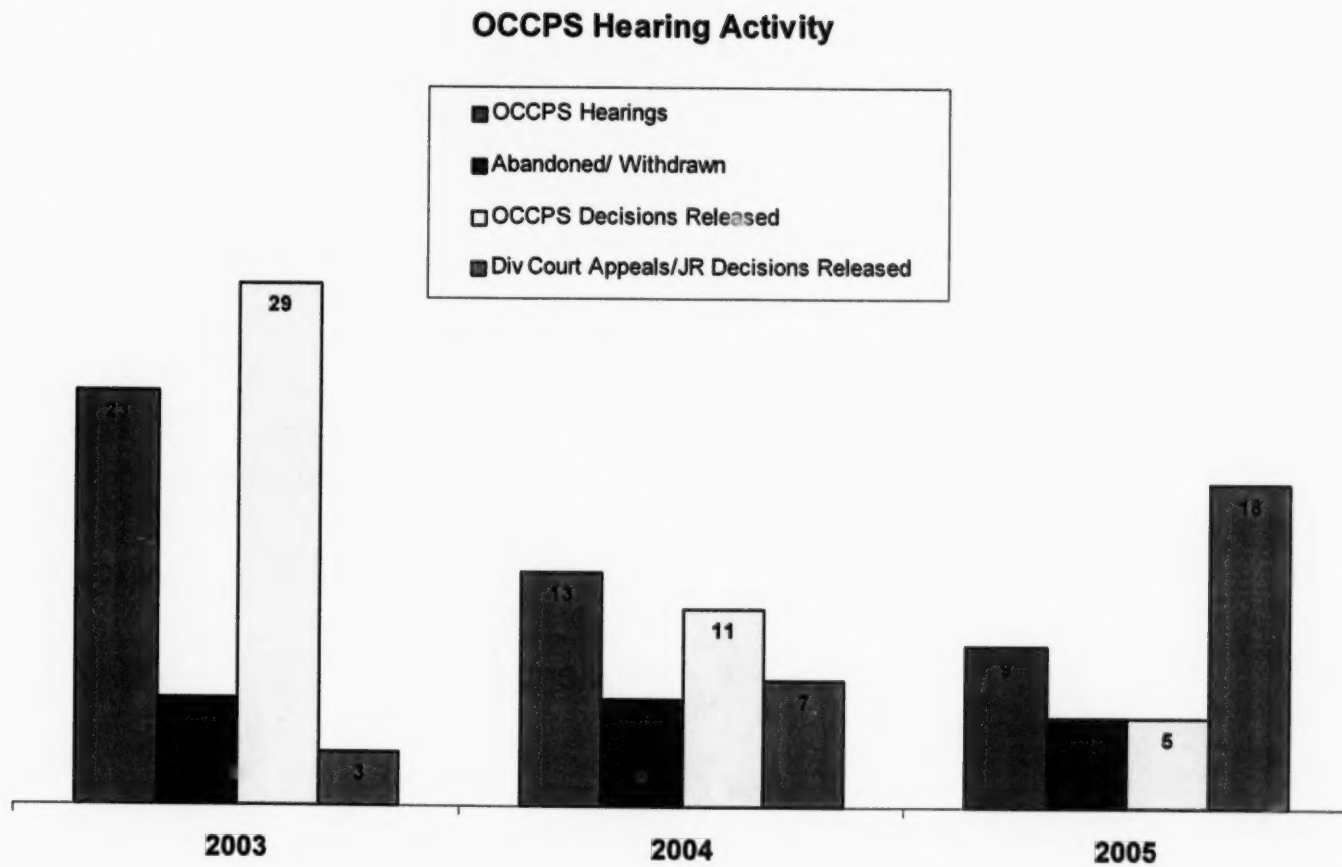
Approval was granted subject to certain conditions being met on July 20, 2005. The official text of this and previous restructuring decisions can be found on the Commission's web site at www.ocps.ca or obtained through the Commission office.

Disciplinary Appeals

Appeal Process



HEARING ACTIVITY CHART



Disciplinary Appeal Decisions

During 2005, the Commission heard eight disciplinary appeals

The following list identifies the appellant, the police service and the date and outcome of the decision. Summaries of these decisions are included in this report. The official text of the full decisions can be found on the Commission's web site at www.occps.ca

DATE	OFFICER/POLICE SERVICE	RESULT
April 22, 2005	PARKER/KOSCINSKI NIAGARA REGIONAL POLICE SERVICE	Acquittal set aside & conviction registered
May 11, 2005	BUCKLE ONTARIO PROVINCIAL POLICE	Conviction and penalty upheld; appeal dismissed
May 16, 2005	KELLY TORONTO POLICE SERVICE	Penalty varied; appeal allowed
July 4, 2995	GRAINER ONTARIO PROVINCIAL POLICE	Reduction in penalty; Requirement to complete program
July 6, 2005	PARKER/KOSCINSKI NIAGARA REGIONAL POLICE SERVICE	Suspension and forfeiture of hours off imposed
November 3, 2005	GRIEPSMA DURHAM REGIONAL POLICE SERVICE	Motion granted; Appeal dismissed
November 16, 2005	WOLFE ONTARIO PROVINCIAL POLICE	Penalty varied; Requirement to complete disposition
November 23, 2005	BRUDLO TORONTO POLICE SERVICE	Motion to introduce new evidence denied; Conviction and penalty upheld; appeal denied

Summary of Disciplinary Appeal Decisions

WAYNE PENNER
Appellant

AND

**CONSTABLE NATHAN PARKER, CONSTABLE PAUL KOSCINSKI AND
NIAGARA REGIONAL POLICE SERVICE**
Respondents

Presiding OCCPS Members:
Murray W. Chitra, Chair
Tammy Landau, Member

Appearances:
Wayne Penner, Appellant
Gary R. Clewley, for Constables Parker and Koscinski
Woodward B. McKaig, for Niagara Regional Police Service

Heard:
February 21, 2005

Date of Decision:
April 22, 2005

Summary of Reasons for Decision

Wayne Penner appealed the decision of the Hearing Officer, in which the Respondent Officers, Constables Parker and Koscinski, were found not guilty of unlawful or unnecessary exercise of authority. The Respondents were charged with misconduct contrary to sections 2(1)(g)(i) and (ii) after the Appellant filed a public complaint under Part V of the *Police Services Act*.

On January 28, 2003 the Appellant's wife Marlene Penner, was appearing in court in St. Catharines, having been charged by Constable Parker with driving a motor vehicle without displaying two plates, an offence contrary to s. 7(1)(b) of the *Highway Traffic Act*. While Constable Parker was giving evidence, Wayne Penner was making "chirping" noises which weren't loud enough to be caught on court recording devices, but which nevertheless were disturbing to the Prosecutor and the Court Officer. After completing his testimony Constable

Parker returned to his seat beside Constable Koscinski, who was present to testify in an unrelated case. Constable Parker at that time remarked to Wayne Penner that he could or would be arrested; this precipitated an outburst from Wayne Penner, who began complaining loudly that Constable Parker had just threatened to arrest him. The Prosecutor asked Mr. Justice Tisi to consider removing Wayne Penner. Mr. Justice Tisi spoke directly to Mr. Penner but directed the witness, Mrs. Penner, to continue. The Court Officer interrupted this discussion and ordered Mr. Penner out of the courtroom. Constable Parker then immediately rose and laid hands on Mr. Penner, directing him to get out. Mr. Penner pulled away, whereupon Constable Parker arrested him, assisted by Constable Koscinski. The two constables dragged Mr. Penner into the hall, applied empty hand and knee strikes, and handcuffed Mr. Penner. Meanwhile, during the melee Mr. Justice Tisi fled the courtroom.

At 11 Division Wayne Penner was booked, strip searched and lodged in a holding cell. He was later taken to a local hospital, where he was examined and x-rayed. He appeared to be unsteady on his feet, had a black right eye, scrapes, sore ribs and a sore left elbow, a bruised left knee and a sore right wrist. Ms. Penner took photos of her husband's injuries.

Wayne Penner was released on a promise to appear. He was charged with causing a disturbance, breach of probation and resisting arrest. All three charges were withdrawn by the Crown. Mr. Penner then filed a public complaint under Part V of the *Act*.

The Hearing Officer identified the central issue as whether or not Constables Parker and Koscinski had the legal authority to arrest the Appellant at the courthouse. The Hearing Officer found the evidence of Mr. and Mrs. Penner to be in large part untrue, overstated and lacking in forthrightness and candor. He found that Wayne Penner had caused a disturbance, there were reasonable and probable grounds for his arrest, and that the courtroom was a public place pursuant to s. 175 of the *Criminal Code*. With respect to whether the presence of the Justice of the Peace would negate the police officers' statutory and common law powers of arrest, the Hearing Officer found that the law on this issue was ambiguous, that the prosecution failed to establish on clear and cogent evidence that Wayne Penner's arrest was "not authorized by statute", and that therefore the arrest should be treated as authorized by law. Since the arrest was lawful, so was the use of force, and the Hearing Officer found that approved techniques were used. The Hearing Officer also found that there was no evidence that Mr. Penner was struck in the eye while being booked at 11 Division, and that any injuries he may have suffered were the direct result of resisting arrest. The Hearing Officer thus dismissed all allegations against the respondent officers.

The Appellant argued that Constables Parker and Koscinski had no grounds to arrest him, and even if they did, they had no authority to do so while the presiding

justice was present in the courtroom. Counsel for the Niagara Regional Police Service argued that it was reasonable for the officers to arrest the Appellant, in light of the duty of police services to provide courtroom security, per s. 137 of the *Act*, and in view of Mr. Penner's behaviour. Counsel for the respondent officers argued that the Hearing Officer made appropriate findings and his decision should not be disturbed.

The Commission revoked the finding of not guilty and found Constable Parker and Koscinski contravened ss.2(1)(9)(i) and (ii) of the Code of Conduct.

The central issue before the Hearing Officer was the legality of the Appellant's arrest for causing a disturbance. In order to determine that issue, the Hearing Officer was required to address and determine 1) whether Mr. Penner had caused a disturbance in a public place; and 2) if so, whether the officers had the legal authority to arrest him, given that the officers laid hands on Mr. Penner during a trial in the presence of a presiding Justice of the Peace, who had not directed the officers to arrest Mr. Penner. The pivotal question was whether any authority the officers may have had to arrest Wayne Penner was superseded by the power of the Justice of the Peace to direct and control the proceedings.

Unfortunately, the Hearing Officer did not answer this fundamental question. His failure to address and determine the applicable law represented a manifest error. Pursuant to its authority under s. 70(6) of the *Act*, the Commission could not remit the matter to the Hearing Officer for reconsideration; rather the Commission had to address the matter.

Mr. Justice Tisi had the power to cite Wayne Penner for contempt and direct his arrest. He chose not to do so. While s. 137(1) of the *Act* imposed a duty on police services to provide court security, in this case Constables Parker and Koscinski were in the court as witnesses; they were not assigned court security duties. Section 42(1)(a) of the *Act* imposed a duty on all police officers to preserve the peace, regardless of their assignment. A courtroom was a public place. However, absent a clear or present threat or a direction by the court, a police officer's authority to arrest a person for causing a disturbance in a courtroom, was superseded by the court's power to deal with disruptive behaviour in the form of contempt. The responsibility and authority to manage and control the court proceeding lay with the presiding justice; and this authority was not superseded, either by the general duties of police officers under s. 42(1)(a) or by the duties of police services under s. 137.

Although the Appellant's conduct was clearly "disturbing" to the Prosecutor and the Court Officer, there was no obvious threat, and the Justice of the Peace was attempting to deal with Mr. Penner when the Court Officer interrupted, followed immediately by Constable Parker laying hands on Mr. Penner. Under these circumstances, the arrest was neither lawful nor necessary; and accordingly, any force used was unjustified.

The Hearing Officer's finding that the black eye allegation was not proven was correct; but the decision could not otherwise stand. The Commission revoked the finding of not guilty, and found that Constables Parker and Koscinski contravened ss. 2(1)(g)(i) and (ii) of the Code of Conduct. The parties were directed to provide written submissions with respect to penalty.

DETECTIVE CONSTABLE JAMES BUCKLE
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding OCCPS Members:
Murray W. Chitra, Chair
Peter Doucet, Member
Bill Marra, Member

Appearances:
Gavin J. May, for the Appellant
Jinan Kubursi, for the Respondent

Heard:
March 1, 2005

Date of Decision:
May 11, 2005

Summary of Reasons for Decision

Detective Constable James Buckle appealed his conviction on four counts of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, as well as the penalty imposed, immediate dismissal.

The events leading to the charges against D.C. Buckle occurred in 1996-1998. In 1991 D.C. Buckle had been assigned to the North Bay Field Unit of the OPP's Drug Enforcement Branch. He worked primarily undercover in drug investigation, and he worked largely without direct supervision. As part of his duties, D.C. Buckle was issued two service credit cards, to cover expenses associated with his duties. Attached to one of the cards was a covering letter stating that the cards were not to be used for personal expenses; in case of inadvertent personal use, the cardholder was required to notify the OPP and was also responsible for repayment.

The first count of discreditable conduct related to Detective Constable Buckle's use of these OPP credit cards to pay for repairs on a motorcycle he had purchased for his own use. He was assisted in the payment of one invoice by a

colleague on the drug unit, D.C. Cecchini, who was junior in service to the Appellant. The civilian employee responsible for processing OPP VISA accounts questioned D.C. Buckle about these VISA charges, but she did pay the accounts after he assured her they were for an OPP vehicle. Consequently, the OPP assumed the full cost of the repairs to D.C. Buckle's motorcycle. When these payments came under investigation, D.C. Buckle admitted that the motorcycle was his; he also told the investigator that he "knew he screwed up" and offered to "go back in uniform" if necessary.

D.C. Buckle had also been provided by the OPP with a Nissan car, which was unmarked to allow him to perform his duties. The second and third counts of discreditable conduct related to claims that he made for reimbursement of replacement tires, and a new windshield. He was asked for receipts, but could not provide them. D.C. Buckle then obtained false receipts which he submitted, whereupon he was reimbursed for the tires and credited for the windshield.

The fourth count related to D.C. Buckle's request for \$400.00 cash to give to D.C. Monteith to pay an informant. D.C. Monteith told investigators that he received only \$200.00 from D.C. Buckle.

The disciplinary charges were stayed pending the outcome of criminal proceedings. When the disciplinary hearing finally commenced in December 2003, D.C. Buckle pled not guilty to the charges of discreditable conduct. D.C. Cecchini was also charged with discreditable conduct for his involvement in these events as well as other allegations of inflated expense accounts and false receipts. D.C. Cecchini pled guilty, reimbursed the OPP for his improper use of the service issued VISA, and following a joint submission on penalty, he was demoted to 4th class constable for three months, forfeited 12 hours time off, lost his management competency credit and was ordered to take financial counseling.

At his disciplinary hearing D.C. Buckle acknowledged that he submitted false receipts, explaining that he could not find the original receipts. He testified that he intended to repay the motorcycle repair expenses. He denied pocketing the extra \$200.00 from the money he requested for D.C. Monteith, stating that he gave the \$200.00 to L, an informant. His Detective Sergeant denied that he authorized a "disguised" payment to L.

The Hearing Officer found that D.C. Buckle's explanations lacked credibility. He found the Appellant guilty on all four counts of discreditable conduct. The Hearing Officer considered 11 factors in sentencing. He noted that the mitigating circumstances in D.C. Cecchini's favour were absent in D.C. Buckle's situation. Given the seriousness of D.C. Buckle's misconduct, he found that the only appropriate penalty was immediate dismissal.

Counsel for the Appellant challenged both the findings of fact and the disposition. Counsel for the Respondent argued that there was a proper evidentiary foundation for the convictions, and noted that the misappropriation of funds in this case amounted to over \$4,000.00, committed over a course of many months.

The Commission upheld the convictions and penalty and the appeal was dismissed.

There was more than sufficient evidence before the Hearing Officer to support his factual conclusions. The number of transactions surrounding the repairs to the motorcycle indicated that this was not an isolated or impulsive act, but rather a pattern of deliberate deceit. There was no real evidence that the purchases relating to the OPP car had ever in fact been made by the Appellant, other than the evidence of D.C. Cecchini, whose testimony was not accepted by the Hearing Officer. Likewise, the Hearing Officer was entitled to reject D.C. Buckle's explanation surrounding the requisition of cash to pay an informant. Thus there was no basis for overturning the convictions.

Misappropriation of public funds was a very serious offence, especially given the Appellant's position of trust. D.C. Buckle's breach of that trust was highly damaging to the reputation of the OPP and other officers working in similar circumstances. To date he had yet to make restitution, and there was no meaningful acknowledgement of responsibility. The Hearing Officer appropriately identified a number of differences between the situations of D.C. Cecchini and D. C. Buckle: D.C. Cecchini came forward and confessed his involvement; he immediately repaid the invoice relating to the motorcycle; he pled guilty at the first opportunity; he was junior in service to the Appellant; and his misappropriation of funds was not for personal gain. These mitigating factors were absent in D.C. Buckle's case, and justified a more severe penalty. There were no grounds for interfering with the penalty of dismissal.

CONSTABLE ROBERT KELLY
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding OCCPS Members:

Murray W. Chitra, Chair
Peter J. Doucet, Member
Hyacinthe Miller, Member

Appearances:

Beth Symes and Ken Jull, for the Appellant
Robert Fredericks, for the Respondent

Heard:

April 20, 2005

Date of Decision:

May 16, 2005

Summary of Reasons for Decision

Constable Robert Kelly was charged with two counts of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct. He pled guilty. Constable Kelly appealed the penalty imposed by the Hearing Officer, resignation in seven days or dismissal.

Constable Kelly was appointed to the Toronto Police Service in 1989 as a cadet. From 1996 to November 2001, when he was arrested, he worked as an undercover operative with the North West Field Command Drug Squad. Between May 2000 and September 2001 he inquired about transferring out of the unit, but his requests were never formalized. Prior to this Constable Kelly had experienced a number of traumatic personal events.

As a result of personal stress Constable Kelly began to use drugs that were readily available to him, given the nature of his duties. He became addicted to cocaine. During a sting operation initiated by the service with the assistance of one of Constable Kelly's associates, Constable Kelly was found in possession of cocaine. He was criminally charged, and pled guilty. The judge imposed a

suspended sentence, largely on the strength of Constable Kelly's substantial efforts at rehabilitation from his drug addiction.

Disciplinary charges, which had been launched but stayed pending the outcome of the criminal trial, were then recommenced. At the disciplinary hearing Constable Kelly pled guilty. An agreed statement of facts was led, together with the trial transcript and medical evidence of Constable Kelly's addiction and his treatment and rehabilitative efforts. A substance abuse assessment which had been completed at the discretion of the service indicated that Constable Kelly was fit to return to work, well on his way to recovery and was no longer using illegal substances. Reference letters and details of Constable Kelly's employment were also tendered. Of note was the fact that the Appellant had an impeccable prior employment record.

The parties made a joint submission on penalty, in the form of a "last chance" agreement. The proposal envisioned random testing, a return to work in an inside position, and a demotion to fourth class constable, with eligibility for progression through the ranks following favourable evaluations.

The Hearing Officer adjourned the hearing; later he expressed concerns about the disposition and invited further submissions. Approximately three months after the initial adjournment, the Hearing Officer imposed his sentence of dismissal. In his decision the Hearing Officer stated that he was not satisfied the joint submission properly addressed the areas of public interest, reputation of the service, general deterrence and Constable Kelly's continued usefulness to the service. In his opinion, Constable Kelly's deliberate acts contributed to his disability of drug addiction, which diminished the employer's duty to accommodate Constable Kelly in another position.

Counsel for the Appellant argued that the Hearing Officer erred in refusing to accept the joint submission, and the penalty was excessive and based on flawed conclusions. The Respondent argued that the Hearing Officer was entitled to reach a different disposition, and the penalty imposed was justified, given the seriousness of Constable Kelly's misconduct.

The Commission allowed the appeal and varied the penalty.

Hearing Officers were not obliged to accept a joint submission. However, when Hearing Officers elected not to do so, they had to adhere to principles of fairness, and provide clear reasons that were based on a sound factual foundation, with due consideration of relevant sentencing factors.

In this case, the Hearing Officer's departure from the joint submission was unjustified. In particular, his assessment of the factors of disability and rehabilitative potential was flawed and erroneous. Constable Kelly's addiction to cocaine constituted a disability under the Ontario *Human Rights Code*, and the

employer was under a legal obligation to accommodate employees with disabilities to the point of undue hardship. The employer acknowledged Constable Kelly's addiction as a disability, sent him for assessment and counselling, and recognized its duty to accommodate by finding alternate duties for him. Nevertheless the Hearing Officer spoke of a "purported" addiction and remarked that Constable Kelly's "...own deliberate acts that amount to criminal behaviour..." were what led to his addiction. Further, he suggested that this element of apparent volition lessened the employer's duty to accommodate. This conclusion was clearly wrong.

In addition, the Hearing Officer's assessment of rehabilitative potential was flawed. The Appellant's misconduct was very serious. However, he pled guilty to both sets of charges, accepted responsibility for his actions, expressed remorse, and took meaningful steps to address his problems. The medical assessment stated that he was fit to return to work and at low risk of relapse. The employer recognized his potential for rehabilitation, and willingly participated in the accommodative exercise of fashioning a "last chance" agreement.

Under the circumstances, the Hearing Officer's rejection of the joint submission was unjustified, and the penalty of dismissal was harsh and punitive. The Commission varied the penalty to reflect the salient proposals in the joint submission.

CONSTABLE KAZIMIR GRAINER
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding OCCPS Members:
Murray W. Chitra, Chair
Noelle Caloren, Member

Appearances:
Michael W. Miller, for the Appellant
Marnie Bacher, for the Respondent

Heard:
March 29, 2005

Date of Decision:
July 4, 2005

Summary of Reasons for Decision

Constable Grainer appealed his conviction on one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, as well as the penalty imposed, a suspension without pay of 20 days or 160 hours.

The facts were much in dispute. On the evening of April 10, 2002 Constable Grainer, while in uniform and on duty, went to a roadhouse bar within his patrol area, where Y, a female acquaintance, was working the bar. Y claimed that Constable Grainer called the bar that evening to inquire when she finished work. He later attended at the bar, and spoke to the owner. After her shift, while she was driving home, Constable Grainer stopped her in his cruiser with the emergency lights on to pull her over. Y claimed that Constable Grainer then suggested they move to a side road, where he made a number of sexually suggestive remarks to her, including that "she had a nice ass" and that he "would like to kiss her all over". Constable Grainer then asked whether she was home alone frequently.

Constable Grainer disputed that version of events. He claimed that he called the owner of the bar on a personal matter. He admitted attending at the bar, where he encountered Y, who asked him to meet her later that evening. He purchased bottled water in anticipation of the meeting. Later he encountered Y driving in the

area as arranged. He denied activating his lights. He testified that they embraced, and had a brief conversation, concerning her marriage break-up. Constable Grainer denied making the comments as alleged by Y; he also denied that a second meeting occurred on a side road.

There were no entries in Constable Grainer's notebook concerning his attendance at the bar or his contact with Y.

At the hearing Constable Grainer pled not guilty to the charge. The Hearing Officer found Y more credible, and convicted Constable Grainer of discreditable conduct.

Counsel for the Appellant argued that the Hearing Officer made errors in interpreting the evidence, failed to apply the burden of proof, and failed to make specific findings of credibility. Counsel argued that the conviction should be overturned. He further submitted that the penalty was harsh, excessive and disproportionate relative to similar cases. The Respondent argued that the Hearing Officer's findings were supported by the evidence, and the penalty was fair.

The Commission upheld the conviction and varied the penalty.

Given that the essential facts were in dispute, this case turned on the assessment of credibility. Determination of credibility was the role of the Hearing Officer, rather than the Commission. As previous case law established, the Hearing Officer's determinations would not be overturned absent manifest error.

In this case the Hearing Officer came to the conclusion that Y's version of events was more credible. This conclusion was not based simply on the demeanour of Y versus Constable Grainer, but on the number and type of inconsistencies in Constable Grainer's version of events. The Hearing Officer's analysis of conflicting evidence was careful and detailed. There were no grounds for overturning the conviction.

Constable Grainer committed serious misconduct. He initiated a conversation with a woman late at night, on an isolated rural road, and made offensive comments of a sexual nature. Y testified that she felt uncomfortable, intimidated and violated. Nevertheless, the penalty did appear to be excessive, in that mitigating factors were given insufficient weight. Constable Grainer had a good record for well over a decade, with the exception of some recent unrelated performance issues. There were no infractions of a similar nature on his record. The incident was isolated, and no physical contact was involved. The Hearing Officer noted that Constable Grainer understood the gravity of his misconduct and would not likely repeat his actions.

Such factors warranted a reduction in the penalty, from a suspension of 20 days to 15 days without pay. The Commission also directed that Constable Grainer successfully complete a program on the prevention of sexual harassment.

WAYNE PENNER
Appellant

AND

CONSTABLE NATHAN PARKER, CONSTABLE PAUL KOSCINSKI AND
NIAGARA REGIONAL POLICE SERVICE
Respondents

Presiding OCCPS Members:
Murray W. Chitra, Chair
Tammy Landau, Member

Appearances:
Wayne Penner, Appellant
Gary R. Clewley, for Constables Parker and Koscinski
Woodward B. McKaig, for Niagara Regional Police Service

Written Submissions:
June 6, 2005

Date of Decision:
July 6, 2005

Summary of Reasons for Decision

In the first decision in this matter (# 0501), the Commission overturned the Hearing Officer's determination that Constables Parker and Koscinski were not guilty of unlawful or unnecessary arrest and unnecessary use of force. This decision dealt with the appropriate penalty for the Commission's determinations of guilt against both constables.

Counsel for Constables Parker and Koscinski suggested a penalty of reprimand for both officers. Counsel for the service suggested forfeiture of 32 hours off for Parker, and 16 hours off for Koscinski. Wayne Penner argued that the officers should be penalized equally, with an unpaid suspension, loss of performance pay and a public apology.

Suspension and forfeiture of hours off imposed.

Unlawful or unnecessary arrest, and the attendant unnecessary use of force, were serious matters, damaging to the reputation of a police service. Deterrence was required.

However, Wayne Penner's behaviour in the courtroom was provocative, and although it didn't excuse Constable Parker's actions, it was a mitigating factor, as was Parker's 15 years of discipline free, positive employment with the service. A review of prior decisions involving unnecessary arrest/force indicated that, absent extreme circumstances, most resulted in a penalty of forfeiture of days off, forfeiture of pay or suspension without pay. Considering the mitigating factors, and the unlikelihood Constable Parker would repeat such misconduct, a suspension without pay of 4 days or 32 hours was appropriate. The loss of performance pay, which would result from a penalty of 40 hours or more, represented an excessive penalty.

Constable Koscinski was junior in service, had a very positive record, and his apparently lesser role justified a lesser penalty. The Commission imposed a forfeiture of 2 days or 16 hours off.

Finally, the *Police Services Act* did not provide the Commission with the authority to order the public apology requested by Mr. Penner.

DONALD A. WILLIAMS
Appellant

AND

DURHAM REGIONAL POLICE SERVICE AND SERGEANT JIM GRIEPSMA
Respondents

Presiding OCCPS Members:
Sylvia Hudson, Vice Chair
Noelle Caloren, Member

Appearances:
Brian Fazackerley, for Durham Regional Police Service
William MacKenzie, for Sergeant Griepsma

Heard:
September 9, 2005

Date of Decision:
November 3, 2005

Summary of Reasons for Decision

The Durham Regional Police Service brought a preliminary motion to dismiss the appeal of Donald Williams for non-compliance with the requirements of s. 70(1) of the *Police Services Act*.

The Appellant Donald Williams brought a complaint of misconduct against the Respondent Sergeant Griepsma. Following a hearing pursuant to s. 64(7) of the *Police Services Act*, the Hearing Officer dismissed the charges. All parties to the hearing were provided with a copy of the written decision on December 7, 2004. By letter dated January 4, 2005 the Appellant filed a request for appeal under s. 70 of the *Act*, which was received by the Commission on January 6, 2005. Evidence presented at the hearing of the motion, which was uncontroverted, indicated that the Prosecutor and Sergeant Griepsma were served notice of the appeal, but not within 30 days of the Hearing Officer's decision. The Appellant did not appear at the hearing or make submissions on the motion.

Section 70(1) of the *Act* provides that a police officer or complainant may, within 30 days of receiving notice of the decision, appeal to the Commission by serving written notice on the Commission. Section 8.1 of the Commission's Rules of

Practice provided that the police officer or complainant "shall deliver upon the other parties and the Commission" notice of appeal together with notice of the decision within 30 days of receiving the decision which is the subject of appeal.

Counsel for the Durham Regional Police Service argued that the Appellant did not comply with the precondition, implicit in s. 70(1), of prior service on the affected parties. Counsel also relied on s. 8.1 of the Commission's Rules, in contending that the notice of appeal and notice of the decision had not been properly served on Sergeant Griepsma and the Prosecutor.

The Commission upheld the preliminary motion and dismissed the appeal.

Section 70(1) specifically identified the Commission as the only entity to be served with notice within the 30 day time-limit, in contrast with s. 77, which dealt with service of notice on a "person" or "board". If the Legislature had intended to broaden the scope of notice under s. 70(1), affected parties would have been specifically identified in the provision.

However, s. 81 of the Commission's Rules did require notice upon the affected parties within 30 days, and s. 8.3 of the Rules required a complainant to provide proof of service on the parties to the Commission. The rule requiring service reflected basic principles of natural justice, by ensuring that persons affected by the appeal would be made aware of the appeal. The Respondents were not served with notice within 30 days. The Appellant did not appear or file any material to contradict the Respondents' evidence in that regard.

Although the Commission had the discretion under s. 3.4 of the Rules to waive or extend the 30 day time-limit, Mr. Williams had made no such request. Further, there were no circumstances in the present case which might warrant the exercise of such discretion, even in the absence of an express request.

SERGEANT MARK WOLFE
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding OCCPS Members:

Murray W. Chitra, Chair
Biagio (Bill) Marra, Member
Krishan D. Uppal, Member

Appearances:

Lorna E. Boyd, for the Appellant
Lorenzo D. Policelli, for the Respondent

Heard:

September 21, 2005

Date of Decision:

November 16, 2005

Summary of Reasons for Decision

Sergeant Wolfe appealed his conviction on one count of discreditable conduct, contrary to s. 2(1)(a)(x) of the Code of Conduct. He also appealed the penalty imposed, forfeiture of 12 hours pursuant to s. 68(1)(f) of the *Police Services Act*. Conditions were imposed on this penalty, in that the Hearing Officer directed Sergeant Wolfe to satisfy the penalty by working annual leave or rest days. The Hearing Officer also directed that Sergeant Wolfe satisfy the penalty within one month. Finally, he required the Appellant to notify the Professional Standards Bureau once his penalty was served.

The conduct giving rise to the conviction was a high speed chase of a stolen vehicle on the evening of February 15, 2003. The pursuit lasted 10 minutes and covered 21 kilometers. The suspect was driving at high speeds, erratically and at times in the oncoming lane, and the driver was reported to smell of alcohol. Six OPP officers in five police cruisers, one of whom was Sergeant Wolfe, were involved in the chase, which had been initiated by Constable Lewis. Sergeant Wolfe was the senior officer, and coordinated the officers' efforts. At one point Sergeant Wolfe directed that a spike belt be set, but when the suspect vehicle

passed over it the belt had little apparent effect. A rolling block and intentional contact were also employed. Eventually the suspect vehicle was forced to stop, at which point the six officers converged on the stolen vehicle. Sergeant Wolfe exited his cruiser with his revolver drawn. When the suspect observed the Appellant, he appeared to be revving the engine. Sergeant Wolfe, fearing the vehicle would run him over, pointed his gun at the head of the suspect. When the vehicle began to move, Sergeant Wolfe stepped aside to avoid the car, and as it was passing him he fired two rounds into the rear wheel assembly. The shots had no effect, and the vehicle sped away again. Finally the pursuing officers were able to make intentional contact with and to pin the vehicle. The driver was arrested and charged with several criminal offences, including mischief endangering life. He pled guilty.

Sergeant Wolfe was charged with discreditable conduct, in that he allegedly contravened s. 8 of O.Reg. 546/99, which stated: "A police officer shall not discharge his or her firearm for the sole purpose of attempting to stop a fleeing vehicle." The Hearing Officer rejected Sergeant Wolfe's explanation that he fired the rounds because he feared for his life. The Hearing Officer found that the suspect vehicle was not bearing down on Sergeant Wolfe at the moment he decided to shoot; rather it was passing him, and so he was not at risk. There was evidence presented at the hearing concerning high speed chases which had resulted in fatalities and which prompted O.Reg. 546/99. There was also evidence relating to the training which officers, including Sergeant Wolfe, received in relation to high speed chases. This prompted the Hearing Officer to comment on the futility and dangerousness of firing at moving vehicles, and to suggest that it was fortunate that officers on the other side of the fleeing car hadn't been struck by the rounds.

The Hearing Officer delivered separate decisions on conviction and penalty.

Counsel for the Appellant argued that the Hearing Officer: failed to provide meaningful reasons or analysis, misunderstood s. 8 of O.Reg. 546/99, misunderstood s. 9 of O.Reg. 926/90 which prohibits a police officer from discharging a firearm "unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or bodily harm", failed to consider the authorization provided to peace officers by s. 25(4) of the *Criminal Code* to use necessary force in performing their lawful duties, failed to appreciate that there was a range of acceptable use of force options, and improperly assessed Sergeant Wolfe's reasonable apprehension of imminent harm. Counsel also argued that the Hearing Officer exceeded his jurisdiction by imposing conditions on the penalty that offended past practice and the Uniform Memorandum of Understanding between the OPP and the Ontario Provincial Police Association.

Counsel for the Respondent argued that the Hearing Officer provided sufficient reasons; his conclusion, that the sole purpose of Sergeant Wolfe's firing at the

rear tire was to stop the suspect's vehicle from fleeing, was supported on the evidence; there had to be an objective aspect to the application of the "sole purpose" threshold in s. 8, which wasn't fulfilled in this case; and the penalty was within the Hearing Officer's authority.

The Commission upheld the conviction and varied the penalty.

The role of the Commission was not to second guess the decision of the Hearing Officer. Instead, the Commission's role was to determine whether the Hearing Officer's conclusions were without evidentiary foundation or could not be reasonably supported. The Hearing Officer's decision on the charges was sufficiently detailed and reasoned to satisfy the requirements of natural justice.

The central question for the Hearing Officer was the appropriateness of Sergeant Wolfe's use of his firearm under the circumstances. The evidence at the hearing suggested that discharging a firearm at a moving vehicle was both dangerous to anyone in the vicinity and ineffective. The use of a firearm was not an approved method of stopping a fleeing vehicle; hence Reg. 546/99, which was developed as an alternative to banning such pursuits altogether. However, the prohibition against firing at a moving vehicle was not absolute. One obvious exception was where an officer had a reasonable imminent fear for his or her life or that of another person. On the evidence before the Hearing Officer, it was reasonable for him to conclude that Sergeant Wolfe hadn't brought himself within that exception. Sergeant Wolfe might legitimately have fired when the suspect began revving his engine and appeared ready to run him over; however, he did not, and at the point when he did fire, Sergeant Wolfe had actually stepped aside to avoid the vehicle, which was passing him when he fired the rounds. It was therefore open to the Hearing Officer to conclude, as he did, that the suspect vehicle was not, at the critical time, a "weapon" that was being directed at either Sergeant Wolfe or at any of the other officers.

Sergeant Wolfe was an experienced and conscientious platoon commander whose conduct on February 15, 2003 was courageous and otherwise beyond reproach. Nevertheless, there were no grounds for overturning the conviction, since he was not authorized to fire at a passing tire for the purpose of stopping the suspect vehicle.

On the issue of penalty, s. 68(1)(f) of the *Police Services Act* was silent on how a penalty of forfeited time was to be satisfied. However, there was nothing in the relevant sections of the *Act* to suggest that a Hearing Officer could not impose reasonable directions to ensure the proper enforcement of a penalty of forfeiture of time off. Thus the Hearing Officer did not exceed his jurisdiction by directing that the Appellant work what would otherwise be time off. However, this authority was subject to practical considerations. The timing of the satisfaction of the penalty was a matter best left to the officer's unit commander. In addition, there

was no reason to require the officer to report the satisfaction of the penalty to a unit (Professional Standards) where he wasn't employed.

Accordingly, the Commission varied the penalty by deleting the one-month condition and the requirement to notify the Professional Standards Bureau.

CONSTABLE CHRISTIAN BRUDLO
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding OCCPS Members:

Murray W. Chitra, Member
Tammy Landau, Member
David Edwards, Member

Appearances:

Gary R. Clewley, for the Appellant
Robert Fredericks, for the Respondent

Heard:

October 19, 2005

Date of Decision:

November 23, 2005

Summary of Reasons for Decision

Constable Brudlo appealed the finding of guilt on one charge of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct. His challenge of the conviction related to the Hearing Officer's denial of a request for an adjournment when the disciplinary proceedings commenced on September 14, 2004. Constable Brudlo also appealed the penalty, dismissal failing resignation within 7 days.

Constable Brudlo joined the Toronto Police Service as a cadet in 1983. In the summer of 2002 he was assigned to uniform duties at the North Collision Reporting Centre. The Centre was staffed by members of the service, Ontario Provincial Police and employees of a private company, North York Accident Support Services Ltd. One of the company's employees, M, made a complaint to a constable assigned to the Centre about Constable Brudlo's conduct towards her. She complained that over the course of three months Constable Brudlo initiated conversations concerning intimate sexual matters, and she also alleged that he touched her on several occasions on her thigh, back and ribcage area. An investigation was undertaken. Constable Brudlo denied M's allegations, and

claimed that he had told M that she was not his "type" when M suggested that they go for coffee if things didn't work out with her fiancé. At the hearing, when asked why M would make up such stories, he replied "Women can be strange creatures. I found that out a few times."

As a result of M's complaint Constable Brudlo was charged with discreditable conduct. He and his counsel received copies of the Notice of Hearing, which warned that dismissal or demotion might result if he were convicted. Constable Brudlo failed to appear on the date scheduled for hearing, and the proceedings were adjourned. On the second date he booked off sick. The matter was adjourned to a further date, at which time he again failed to appear. On the fourth scheduled date, Constable Brudlo again booked off sick and failed to attend. He failed to appear on the next date, and the matter was rescheduled for September 14, 2004. On that date, he appeared with counsel and requested an adjournment to provide additional time to prepare. Constable Brudlo testified in support of his adjournment application, indicating that he had been taking various medications for medical and emotional problems, which affected his ability to prepare and to concentrate. Constable Brudlo also indicated that he suffered from attention deficit disorder, which made it difficult for him to "digest" the disclosure materials. He submitted no medical evidence in support of his application.

The Hearing Officer dismissed the request for an adjournment with brief reasons, and proceeded with the hearing.

The Hearing Officer identified the central issue as credibility. In that regard, he preferred the evidence of M, which he described as unrehearsed and without exaggeration. He found Constable Brudlo's denials and explanations of various incidents to be improbable. He indicated that he was very troubled by Constable Brudlo's remark that "Women can be strange creatures." Consequently he found that the allegations were proven. When the hearing resumed for the purpose of determining penalty, counsel for the Appellant acknowledged that his client had received a fair hearing, and his submissions focused on the propriety of the penalty. In that regard, the Hearing Officer took note of Constable Brudlo's 17 years of service and satisfactory work record. However, Constable Brudlo also had a disciplinary record, consisting of a prior termination and a forfeiture of 120 hours. The termination occurred in 1990, after Constable Brudlo was found guilty of the criminal offence of committing an indecent act, which involved exposing his penis on three occasions to two female neighbours. He received an absolute discharge. The termination that followed was replaced on appeal with a reduction in rank to fourth class constable. In December 2002 Constable Brudlo pled guilty to domestic assault. He received a conditional discharge and was placed on probation for 12 months. The disciplinary proceeding which followed in the summer of 2003 (the same time as the events giving rise to the instant charge), resulted in a penalty of loss of 120 hours off.

The Hearing Officer was of the view that this disciplinary history, together with the seriousness of the Appellant's misconduct, warranted termination. He pointed out that Constable Brudlo had received assistance in the form of anger management treatment and psychological counseling, yet his actions in the subject incidents demonstrated a bias and lack of sensitivity towards women. He observed that Constable Brudlo had a character flaw that rendered rehabilitation unlikely and that nullified his potential future usefulness as a police officer. Considering the need for deterrence and the damage to the reputation of the service, he felt that termination was the only appropriate penalty.

On appeal to the Commission, counsel for the Appellant brought a motion to introduce new or additional evidence, in the form of a letter from a psychologist concerning the Appellant's participation, post termination, in five counselling sessions on gender sensitivity. Counsel challenged the finding of guilt on the ground that the denial of an adjournment put the Appellant at a severe disadvantage, since he was on medication. Counsel suggested a new hearing as the proper remedy, or alternatively, that the penalty was excessive and should be replaced with a demotion to fourth class constable for one year.

Counsel for the Respondent opposed the motion to introduce new evidence, and argued that the conviction and penalty should stand: the former because the evidence supported it and because the denial of an adjournment did not prejudice Constable Brudlo; the latter because the penalty was neither harsh nor excessive, and it was consistent with relevant comparator decisions.

The Commission denied motion to introduce new evidence. The conviction on penalty were upheld and the appeal denied.

The motion to introduce new evidence was not filed with the Commission until two days before the appeal, contrary to the Commission's Rules of Practice, which required that such motions be filed at least fourteen days before the Commission deals with the motion. Thus the motion was untimely, but in addition it was not clear that it would be "just" to receive the new evidence, pursuant to s. 70(5) of the *Police Services Act*. The evidence failed to meet two aspects of the test laid out in *Palmer v. Her Majesty the Queen*, in that with due diligence the matters addressed in that evidence could have been raised at the sentencing hearing. In addition, the evidence was not particularly relevant to the issue of penalty, in that it contained no statement of medical opinion or prognosis.

There was no evidence that the denial of a request for a further adjournment resulted in prejudice to the Appellant. In fact, his counsel specifically acknowledged at the penalty hearing that his client had received a fair hearing. Both the Appellant and counsel received adequate disclosure and sufficient time to prepare. Further, the request was made against the backdrop of hearing dates that had to be rescheduled repeatedly because the Appellant was

unavailable and two prior adjournments. The Hearing Officer observed that the Appellant had "no difficulty in expressing himself", notwithstanding his claims of disability or impairment by medication. It was open to the Hearing Officer to conclude, therefore, that the Appellant had not met the onus of showing that a third adjournment was necessary to permit an adequate hearing to be held.

The Appellant's offence was not an isolated incident, but rather a course of offensive conduct over the course of months, in contravention of service policies and procedures aimed at creating and maintaining a workplace free from harassment. The conduct was properly characterized by the Hearing Officer as very serious, likely to damage the reputation of the service and as warranting both general and specific deterrence. As well, it occurred at a time when the Appellant was on probation for assaulting his common-law spouse and during a period when he was facing disciplinary action for that incident. Not surprisingly, therefore, the Hearing Officer was very concerned about the disciplinary history, and his opinion that an apparent character flaw negated any possibility of rehabilitation appeared to be borne out by the evidence. Constable Brudlo's employment history did indeed reflect a serious problem in dealing with members of the opposite sex. This would be disturbing in the case of any employee, but particularly so in the case of a sworn police officer. The option of termination was open to the Hearing Officer and, on the facts, it was an appropriate penalty.

Appeals and Judicial Reviews Ontario Court Of Justice

The following is a list of Commission decisions that were subject to Judicial Appeal or Review where the courts rendered their decision in 2005. A full text of the Judicial Appeal or Review decisions can be obtained at: <http://www.canlii.org/on/cas/onscdc/2005/index.html>

PARTIES	OUTCOME
S/Sgt. Sharon Davis/Toronto P.S.	Abandoned January 14/05
Chief LaBarge/York R.P.S.	Stayed January 24/05
Cst. James Monaghan/Toronto P.S.	Commission decision overturned March 31/05
Cst. Michael Sommers/Toronto P.S. Cst. Jeffrey Alderdice/Toronto P.S. Sgt. John Babiar, Cst. Jason Lawrence, Cst. William Ritch/Toronto P.S. Sgt. Guy Colton/Toronto P.S. Sgt. Jaan Kraayeveld/Toronto P.S. Cst. Jason Leitch/Toronto P.S. Det. Howard Page/Toronto P.S.	Dismissed May 10/05
Cst. Craig Galassi/Hamilton P.S.	Dismissed June 8/05
Inspector Tom Cameron/Durham R.P.S.	Withdrawn June 13/05
Leabert Jarvis/Toronto P.S.B. & OCCPS	Dismissed June 13/05
Cst. Rob Boomhour/Durham R.P.S.	Dismissed for delay November 9/05
Sgt. Larry Savage/Toronto P.S.	Withdrawn

Public Complaints

Part V of the Police Services Act mandates the Commission as the review body for public complaint decisions made by chiefs of police and the Commissioner of the Ontario Provincial Police.

Complaints may be made about the conduct of a police officer (including the Chief of Police or Commissioner of the Ontario Provincial Police), the policies of a police service or the services provided by a police service. Only the individual directly affected can file a complaint and the complaint must be in writing and signed.

If the individual involved is not satisfied with the decision of the Chief of Police or Commissioner of the Ontario Provincial Police, the complainant has 30 days to write to the Ontario Civilian Commission on Police Service and request a review. To conduct the review, the Commission requests information from the complainant as well as the investigation file from the involved police service. Case Managers analyze each file and prepare a written case summary that is presented to a Review Panel composed of Commission members.

On review, the Commission may confirm the decision of the Chief/Commissioner or they may vary the decision. The Review Panel may vary the decision to less serious misconduct, direct a public hearing or return the file to the involved police service or another police service for further investigation.

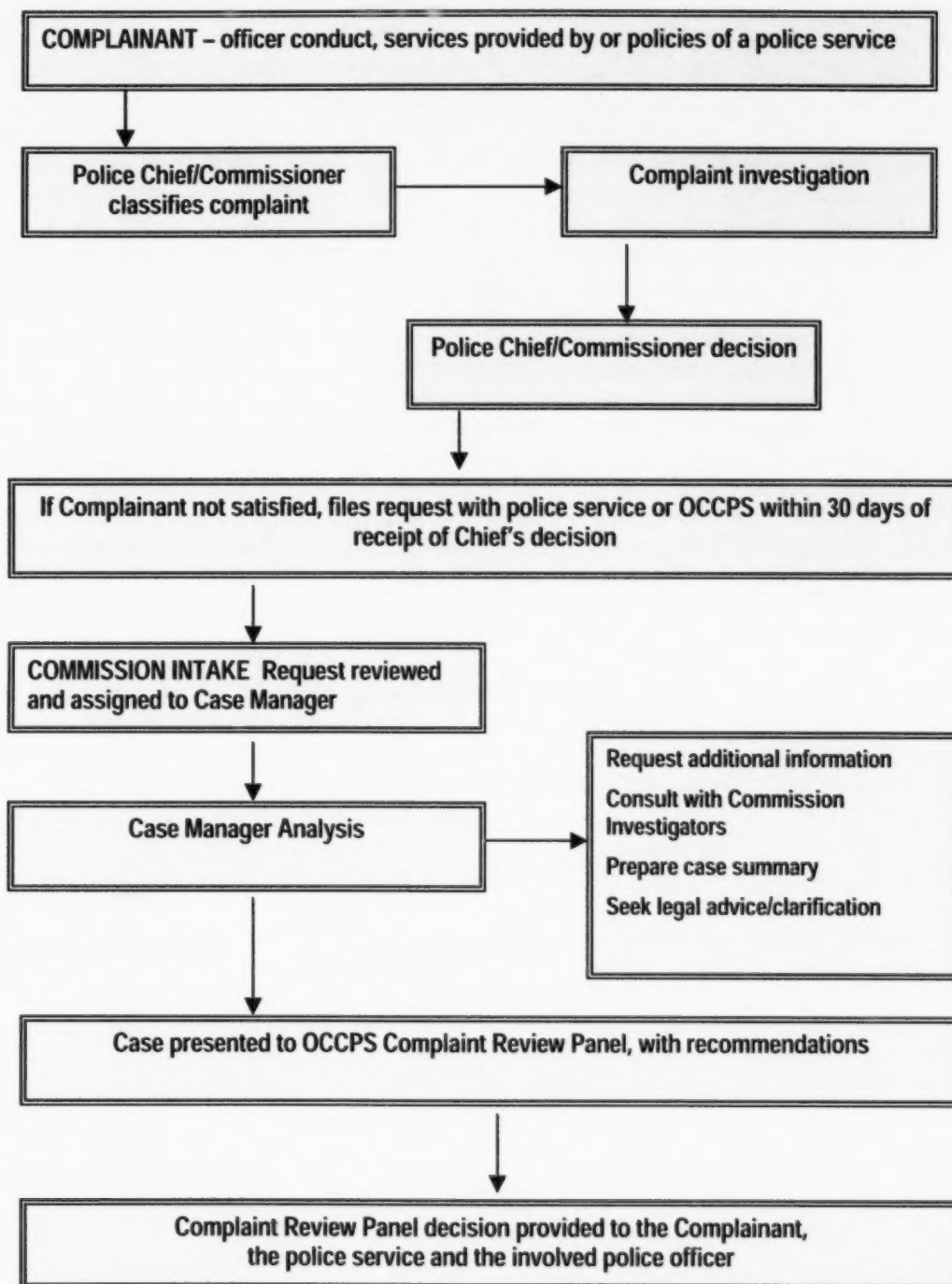
In 2005, there were 2,868 public complaints filed against the 21,978 sworn police officers or their police services in Ontario. This represents a slight decrease in complaints made against the sworn police officers for 2004. During 2005, the Commission received 569 requests for review, an increase of 7 requests from the previous year.

An overview of the complaints review process, a statistical summary of public complaints from 2000 to 2005 and samples of complaint review case summaries are contained on the following pages.

Awards and Recognitions

In 2005, the Hamilton Police Service, Kingston Police Service and Midland Police Service were the recipients of the 2003/2004 Ontario Civilian Commission on Police Services' prestigious award for outstanding achievement for public complaints administration.

Overview of Public Complaints Process



Statistical Charts

The following four charts depict:

- The number of public complaints against police officers in Ontario for the period 2001 - 2005
- 2005 Police Service Complaints Activity
- Reviews requested by complainants for the period 2001 - 2005
- OCCPS review statistics 2001- 2005

PUBLIC COMPLAINTS AGAINST POLICE OFFICERS IN ONTARIO + 2001 - 2005

2001	2,805
2002	2,829
2003	2,845
2004	3,110
2005	2,868

+ Source: Police Services Self Reported

2005 Police Services	OUTSTANDING INVESTIGATIONS (December 2005)																			
	LOST JURISDICTION																			
	HEARING																			
	INFORMAL DISCIPLINE																			
	UNSUBSTANTIATED																			
	WITHDRAWN																			
	RESOLUTION Informal (Conduct)																			
	NOT DEALT WITH (Section 59)																			
	ALLEGATIONS Other																			
	ALLEGATIONS Unsatisfactory Work Performance																			
	ALLEGATIONS Exercise of Authority																			
	ALLEGATIONS Excessive Use of Force																			
	ALLEGATIONS Discreditable Conduct																			
	ALLEGATIONS Neglect of Duty																			
	ALLEGATIONS Incivility																			
	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR 2004																			
	TOTAL PUBLIC COMPLAINTS POLICY																			
TOTAL PUBLIC COMPLAINTS SERVICE																				
TOTAL PUBLIC COMPLAINTS CONDUCT																				
TOTAL PUBLIC COMPLAINTS 2005 (NEW)																				
TOTAL PUBLIC COMPLAINTS 2004																				
Total Officers subject to Part V																				

Amherstburg	30	8	8	0	0	0	0	1	0	2	1	4	0	0	0	0	0	6	0	0	2	0
Atikokan	11	2	1	1	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	0	0	0
Aylmer	13	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Barrie	178	33	31	28	3	0	5	7	1	5	7	7	2	1	2	11	3	7	1	0	0	6
Belleville	82	18	13	13	0	0	6	2	2	1	4	3	0	1	0	1	6	3	0	1	0	2
Brantford	144	26	23	23	0	0	8	1	2	5	4	10	0	1	3	3	0	6	2	2	0	7
Brockville	41	9	5	4	0	1	0	2	0	0	2	0	0	1	0	4	0	1	0	0	0	0
Chatham Kent	165	23	15	10	4	1	6	0	3	0	3	4	1	4	5	5	0	7	1	0	0	2
Cobourg	34	8	8	7	0	1	0	0	7	0	1	0	0	0	0	1	0	6	1	0	0	0
Cornwall	85	13	11	10	0	1	0	0	9	1	1	0	0	0	0	3	2	4	0	0	1	1
Deep River	8	0	1	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Dryden	19	3	1	1	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0
Durham Regional	904	112	100	99	0.5	0.5	0	0	29	48	27	11	0	4	23	7	35	18	0	1	0	13
Espanola	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	28	2	4	0	0	0	1	1	1	1	1	0	0	0	1	0	0	1	0	0	0	3
Gananoque	15	3	1	1	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	0	0	0
Guelph	178	15	17	17	0	0	2	4	4	1	4	3	0	1	2	1	8	5	0	0	0	3
Halton Regional	531	64	61	58	2	1	12	0	6	50	3	0	0	2	11	10	14	18	2	0	0	14

2005 Police Services	Total Officers subject to Part V	OUTSTANDING INVESTIGATIONS (December 2005)																				
		LOST JURISDICTION	HEARING	INFORMAL DISCIPLINE	UNSUBSTANTIATED	WITHDRAWN	RESOLUTION Informal (Conduct)	NOT DEALT WITH (Section 59)	ALLEGATIONS Other	ALLEGATIONS Unsatisfactory Work Performance	ALLEGATIONS Exercise of Authority	ALLEGATIONS Excessive Use of Force	ALLEGATIONS Discreditable Conduct	ALLEGATIONS Neglect of Duty	ALLEGATIONS Involently	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR.	TOTAL PUBLIC COMPLAINTS POLICY	TOTAL PUBLIC COMPLAINTS SERVICE	TOTAL PUBLIC COMPLAINTS CONDUCT	TOTAL PUBLIC COMPLAINTS 2005 (NEW)	TOTAL PUBLIC COMPLAINTS 2004	
Hamilton	751	141	124	110	14	0	0	21	11	42	25	11	0	0	24	9	4	78	4	0	0	15
Hanover	13	3	8	7	1	0	1	3	1	0	3	2	0	0	1	0	2	3	0	0	0	3
Kawartha Lakes City of (formerly Lindsay)	35	8	2	2	0	0	0	0	0	1	1	0	0	0	0	0	0	2	0	0	0	0
Kenora	33	3	3	1	0	0	2	0	0	0	0	1	0	0	0	1	1	3	0	0	0	0
Kingston	179	33	26	26	0	0	1	0	4	14	3	5	0	0	3	3	2	5	1	0	0	12
LaSalle	32	5	6	6	0	0	0	4	1	1	0	0	0	0	0	2	0	4	0	0	0	0
Leamington	40	5	11	8	3	0	2	1	0	0	3	2	2	3	0	11	11	0	0	0	0	4
London	550	83	89	84	3	2	2	7	21	18	17	12	1	13	2	25	4	35	17	2	0	4
Michipicoten Township	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Midland	25	5	2	0	0	0	1	1	1	0	1	0	0	0	0	1	1	0	0	0	0	0
Niagara Regional	660	97	106	106	0	0	0	23	34	20	22	5	0	2	24	14	20	32	0	3	0	13
North Bay	86	16	18	18	0	0	4	6	4	0	4	2	0	2	1	0	13	7	0	0	0	1
Ontario Provincial Police	5493	549	500	468	23	9	155	105	333	198	114	149	0	24	94	78	135	418	9	60	1	22
Orangeville	35	15	6	6	0	0	2	0	2	4	0	0	0	0	0	0	0	6	0	0	0	0
Ottawa	1161	218	233	231	2	0	61	0	15	169	47	0	0	0	29	9	70	48	2	0	0	73
Owen Sound	43	8	3	2	0	1	0	1	0	0	0	1	0	1	3	0	0	0	0	0	0	0
Oxford Community	80	9	7	7	0	0	3	0	0	0	3	0	4	0	0	1	0	2	0	0	0	7
Peel Regional	1678	185	160	158	2	0	37	82	9	0	52	10	0	44	30	89	13	17	1	1	0	46

2005 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2004	TOTAL PUBLIC COMPLAINTS 2005 (NEW)	TOTAL PUBLIC COMPLAINTS CONDUCT	TOTAL PUBLIC COMPLAINTS SERVICE	TOTAL PUBLIC COMPLAINTS POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR	ALLEGATIONS Incivility	ALLEGATIONS Neglect of Duty	ALLEGATIONS Discreetable Conduct	ALLEGATIONS Excessive Use of Force	ALLEGATIONS Exercise of Authority	ALLEGATIONS Unsatisfactory Work Performance	ALLEGATIONS Other	NOT DEALT WITH (Section 59)	RESOLUTION Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	LOST JURISDICTION	OUTSTANDING INVESTIGATIONS (December 2005)
Pembroke	28	6	2	2	0	0	0	2	0	0	0	0	0	0	0	0	0	2	0	0	0	0
Perth	15	1	3	3	0	0	0	0	1	0	0	2	0	0	0	2	0	1	0	0	0	0
Peterborough Lakefield	121	20	25	25	0	0	3	0	14	9	2	2	0	0	3	2	3	4	12	0	0	1
Port Hope	25	2	1	0	1	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0
Sarnia	111	34	25	25	0	0	4	1	6	2	13	2	0	1	4	2	4	12	0	0	0	7
Saugeen Shores	19	0	0	0	0	0	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	1
Sault Ste. Marie	130	26	19	18	0	1	7	5	3	3	2	5	0	1	0	0	0	14	1	0	0	4
Shelburne	10	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Smiths Falls	23	1	2	2	0	0	1	0	0	2	0	0	0	0	0	0	0	2	0	0	0	1
South Simcoe	69	3	7	3	2	2	0	0	0	2	1	1	0	3	1	3	0	1	0	0	0	2
St. Thomas	60	4	8	7	1	0	0	1	4	2	3	1	0	0	1	0	2	5	0	0	0	0
Stirling Rawdon	8	1	1	1	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0
Stratford	53	3	6	5	1	0	0	0	0	1	0	2	1	2	1	1	0	2	0	0	0	2
Strathroy Caradoc	30	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudbury Regional	241	53	54	53	1	0	13	11	16	9	8	9	0	1	9	0	19	7	3	0	0	16
Temiskaming Shores (formerly New Liskeard)	10	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Thunder Bay	213	42	40	37	3	0	0	6	12	1	21	0	0	0	9	0	3	21	5	0	0	2
Timmins	79	16	21	19	1	1	0	5	5	1	4	2	2	2	3	4	4	5	0	1	3	1
Toronto	5245	862	772	543	20	2	212	163	75	138	136	19	0	12	196	92	97	197	7	1	0	180

2005 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2004	TOTAL PUBLIC COMPLAINTS 2005 (NEW)	TOTAL PUBLIC COMPLAINTS CONDUCT	TOTAL PUBLIC COMPLAINTS SERVICE	TOTAL PUBLIC COMPLAINTS POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR	ALLEGATIONS Incivility	ALLEGATIONS Neglect of Duty	ALLEGATIONS Disrespectable Conduct	ALLEGATIONS Excessive Use of Force	ALLEGATIONS Exercise of Authority	ALLEGATIONS Unsatisfactory Work Performance	ALLEGATIONS Other	NOT DEALT WITH (Section 59)	RESOLUTION Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	OUTSTANDING INVESTIGATIONS (December 2005)			
																					LOST JURISDICTION			
Waterloo Regional	653	84	55	54	1	0	24	2	12	49	21	12	0	16	15	37	1	13	1	0	2	10		
West Grey (formerly Town of Durham)	19	6	14	11	3	0	0	6	0	0	0	3	1	4	8	0	1	3	1	0	0	1		
West Nipissing	19	3	1	1	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	1			
Windsor	223	88	88	78	10	0	14	43	10	30	29	10	0	10	8	31	8	12	4	3	0	16		
Wingham	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
York Regional	1188	124	119	118	1	0	33	38	19	28	21	13	0	0	14	10	33	32	1	1	0	28		
Services disbanded during 2005																								
None																								

REVIEWS REQUESTED BY COMPLAINANTS **

2001 – 2005

2001	491
2002	466
2003	488
2004	562
2005	569

****Source:** *Ontario Civilian Commission on Police Services*

OCCPS REVIEW STATISTICS

2001 - 2005

	2001	2002	2003	2004	2005
Total Complaints Reported in Ontario*	2805	2814	2845	3110	2868
Reviews by OCCPS	494	466	488	562	569
Decisions Varied:	46	91	85	126	128
% Varied	9%	20%	17%	22%	22%
Hearings Ordered	13	19	30	18	14
Less Serious Misconduct	5	8	5	13	4
Further Investigation	15	39	31	67	74
Varied Classification	12	25	19	28	33
Less Serious to No Misconduct	1				3

*As self reported by Police Service

Summary of a Noteworthy Public Complaint Review

Discreditable Conduct

An officer was involved in the overseeing of the booking of prisoners during a demonstration in downtown Toronto. During the demonstration, 40 arrests were made, although not all led to the laying of criminal charges.

Several months after this event, a complaint was filed concerning the manner in which an individual was subject to a complete search. The matter was investigated and marked as unsubstantiated by the Toronto Police Service.

The complainant sought a review by the Ontario Civilian Commission on Police Services who ordered a hearing into the conduct of the officer-in-charge of the cells. This officer was the individual who authorized officers to conduct complete searches on the complainants pursuant to Toronto Police Service procedures.

Prior to a hearing being held, the complainant entered into a resolution, based on the fact that the Toronto Police Service procedures have been changed to ensure better handling and processing of prisoners.

Specifically, the Service now has a Mass Arrest policy. As well, the Toronto Police Service procedure for Search of Persons has been revised to comply with the ruling of the Supreme Court of Canada handed down two months after the demonstration in the matter of *R. v. Golden* (December 2001)

First Nations Policing

The Constitution Act, 1867, assigned responsibility for the administration of justice to the provinces. Constitutionally and legislatively, Ontario is responsible for the delivery of policing services in all parts of the province, including First Nations.

In 1975, the Task Force on Policing led to the establishment of a tripartite arrangement for funding the Ontario First Nations Policing Agreement. The Ontario Provincial Police administer the program and provide support. There has been a gradual transfer of administrative responsibility from the OPP to First Nations governing authorities. Some of the functions, which previously had been the exclusive responsibility of the OPP, have become jointly administered; others have been assumed completely by First Nations.

Section 54 of the Police Services Act, states that, "with the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specific duties" and further, "if the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve's governing authority or band council."

First Nations Police are responsible for enforcing provincial and federal laws and band bylaws in First Nations Territories.

In the calendar year 2005, there were in excess of 400 First Nations Constables serving in Ontario.

